

Department of Energy

§ 820.33

produced under oral examination. Before any such statement is read or admitted into evidence, the witness shall have delivered a copy of the statement to the Presiding Officer and the opposing counsel not less than 10 days prior to the date the witness is scheduled to testify. The witness presenting the statement shall swear or affirm that the statement is true and accurate to the best of his knowledge, information, and belief and shall be subject to appropriate oral cross-examination upon the contents thereof provided such cross-examination is not unduly repetitious.

(d) *Burden of presentation; burden of persuasion.* The Director has the burden of going forward with and of proving that the violation occurred as set forth in the Notice of Violation and that the proposed civil penalty is appropriate. Following the establishment of a *prima facie* case, respondent shall have the burden of presenting and of going forward with any defense to the allegations set forth in the Notice of Violation. Each matter of controversy shall be determined by the Presiding Officer upon a preponderance of the evidence.

§ 820.30 Post-hearing filings.

Within fifteen days after the filing of the transcript of the hearing, or within such longer time as may be fixed by the Presiding Officer, any party may file for the consideration of the Presiding Officer, proposed findings of fact, conclusions of law, and a proposed order, together with briefs in support thereof. Reply briefs may be filed within ten days of the filing of briefs. All filings shall be in writing, shall be served upon all parties, and shall contain adequate references to the record and authorities relied on.

§ 820.31 Initial decision.

(a) *Initial Decision.* The Presiding Officer shall file an Initial Decision as soon as practicable after the period for filing reply briefs under 820.30 has expired. The Initial Decision shall contain findings of fact, conclusions regarding all material issues of law or discretion, as well as reasons therefor, any remedy and a proposed Final Order. A party may file comments on

an Initial Decision within fifteen days of its filing.

(b) *Amount of civil penalty.* If the Presiding Officer determines that a violation has occurred and that a civil penalty is appropriate, the Initial Decision shall set forth the dollar amount of the civil penalty. If the Presiding Officer decides to assess a penalty different in amount from the penalty assessed in the Final Notice of Violation, the Initial Decision shall set forth the specific reasons for the increase or decrease.

§ 820.32 Final order.

(a) *Effect of Initial Decision.* The Initial Decision shall be deemed filed as a Final Order thirty days after the filing of the Initial Decision unless the Secretary files a Final Order that modifies the Initial Decision or the Secretary files a Notice of Review.

(b) *Notice of review.* If the Secretary files a Notice of Review, he shall file a Final Order as soon as practicable after completing his review. The Secretary may, at his discretion, order additional procedures, remand the matter or modify the remedy, including an increase or decrease in the amount of the civil penalty from the amount recommended to be assessed in the Initial Decision.

(c) *Payment of a civil penalty.* The respondent shall pay the full amount of any civil penalty assessed in the Final Order within thirty (30) days after the Final Order is filed unless otherwise agreed by the parties.

§ 820.33 Default order.

(a) *Default.* The Presiding Officer, upon motion by a party or the filing of a Notice of Intent to issue a Default Order *sua sponte*, may find a party to be in default if the party fails to comply with the provisions of this part or an order of the Presiding Officer. The alleged defaulting party shall have ten days to answer the motion or the Notice of Intent. No finding of default shall be made against the respondent unless the Director presents sufficient evidence to the Presiding Officer to establish a *prima facie* case against the respondent. Default by respondent constitutes, for purposes of the pending action only, an admission of all facts alleged in the Final Notice of Violation and a waiver of respondent's rights to